



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Winnebago County Department of Human Services, Petitioner

vs.

DECISION

Case #: FOF - 161616

██████████ Respondent

Pursuant to petition filed October 31, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Winnebago County Department of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Thursday, December 11, 2014 at 01:30 PM, at ██████████, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Winnebago County who received FS benefits in Winnebago County from May 1, 2011 through April 30, 2014.

2. On February 17, 2010, the respondent applied for FS benefits. She reported her residence was in Racine. In response to a question regarding “Existing People in Your Home,” respondent reported herself and a minor child, [REDACTED]
3. On September 9, 2010, the respondent submitted a new application for FS benefits. She reported a change in address to [REDACTED], Wisconsin. In response to a question regarding “People in Your Home,” respondent reported herself and [REDACTED]. In addition, in response to a question regarding “Where does he/she [REDACTED] live?” respondent stated “in this home.”
4. [REDACTED] lived, at all times relevant herein, in Racine.
5. From 2012 – 2014, [REDACTED] attended [REDACTED] in Racine.
6. On April 8, 2014, [REDACTED] applied for FS benefits and healthcare benefits in Racine County. She reported she was living with her grandparents in Racine.
7. On April 9, 2014, [REDACTED]’s grandfather submitted a letter to the agency in Racine County stating that [REDACTED] has lived with him in Racine since her birth.
8. On April 16, 2014, the agency commenced an investigation regarding [REDACTED]’s residence. The agency concluded that [REDACTED] has lived in Racine with her grandparents since prior to February, 2010. It also concluded that [REDACTED] occasionally visited the respondent on weekends in [REDACTED]
9. On November 5, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent failed to accurately report household members.

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to

commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the opposite is true.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. The respondent did not dispute that ■■■ did not live with her in ■■■ and that ■■■ lived with her grandparents (respondent’s parents) in Racine at all times relevant herein. The respondent contends that she was with ■■■ every weekend, sometimes in ■■■ and sometimes in Racine. She asserts that ■■■ was with her 50% of the time. Based on the evidence, I conclude that ■■■ was in Racine with her grandparents at least 5 of 7 days of the week. The respondent misrepresented ■■■’s residence on the application when she stated that ■■■ lived in her home in ■■■. The respondent never reported to the agency that ■■■ was living in Racine with her grandparents. If she had reported the situation accurately, the agency could have done a proper analysis of whether ■■■ could be considered a part of the respondent’s FS group. The FS application and regulations state

that an applicant must provide true and accurate information. The respondent did not provide true and accurate information and the evidence demonstrates that she knew she was not providing accurate information about [REDACTED]'s residence. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that FS recipients must provide truthful and accurate information.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

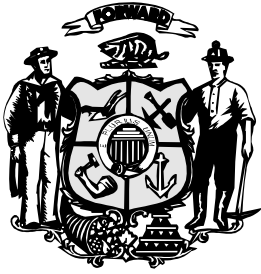
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of January, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: East Central IM Partnership - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Jeanie Ortiz - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 13, 2015.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
JOrtiz@co.winnebago.wi.us